

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1682 of 2021

Smt. Nirmala Jain

....

Petitioner

versus-

State of Odisha

....

Opposite Party

CORAM: JUSTICE S. PUJAHARI

ORDER

12.09.2022

Order
No.

05.

1. This matter is taken up through hybrid mode.
2. This application under Section 482 of Cr.P.C. has been filed by the Petitioner with a prayer to quash the proceeding in T.R. Case No.42 of 2020, arising out of Malkangiri P.S. Case No.336 of 2020, pending in the Court of Additional Sessions Judge-cum-Special Judge, Malkangiri.
3. Heard the learned counsel for the Petitioner and the learned counsel for the State-Opposite Party.
4. As it appears, the Petitioner had approached this Court in ABLAPL No.7691 of 2021 wherein this Court while not being inclined to grant pre-arrest bail, granting liberty to the Petitioner to surrender before the court in seisin over the matter and move for bail, disposed of the ABLAPL. However, this present case has been filed by the present Petitioner for quashment of the aforesaid proceeding, as no material is there against her.

5. In course of hearing, a memo in the form of an affidavit has been filed indicating therein that she had not approached this Court in the aforesaid ABLAPL and also not entrusted to Mr. Asit Kumar Jena, learned counsel, for filing of the ABLAPL and her signature therein also spurious, forge and fabricated one.

6. However, the aforesaid is no way relevant for quashment of the prosecution against her. It appears that some of the accused persons are charge sheeted. The investigation is open in respect of other accused persons. Prima facie material is there against the Petitioner, for which, this Court had not allowed the Petitioner to be released on pre-arrest bail. Even if the Petitioner denied that she had approached this Court for pre-arrest bail, but the same is no ground to quash the proceeding against the Petitioner, as learned counsel for the State submits that the investigation is pending against her.

7. Accordingly, the Criminal Misc. Case stands dismissed.

8. So far as filing of ABLAPL is concerned, the Petitioner alleges that she had not entrusted to Mr. Asit Kumar Jena, learned counsel.

9. Mr. Asit Kumar Jena, learned counsel submits that he was entrusted by lower court counsel, namely, Mr. Tofan Panigrahi and he in good faith had filed the aforesaid ABLAPL. But it is never his case that the Petitioner had ever appeared

before him. However, before Notary Public, as revealed from the record of ABLAPL, it appears that the Petitioner/deponent had appeared before Notary for swearing on the affidavit and Mr. Asit Kumar Jena, learned counsel, identified her. So the question of good faith appears to this Court, therefore, is without any substance.

10. Be that as it may, since the very applicant in the ABLAPL, who is also applicant in this petition and filed an affidavit stating therein that her signature in the ABLAPL and in the Vakalatnama is not of her and the same is spurious one and she had not entrusted the brief to Mr. Asit Kumar Jena coupled with the submission of Mr. Asit Kumar Jena, has reason to believe that such submission of the learned counsel for the Petitioner in this case appears to have force. The allegation is serious.

11. Hence, the matter is referred to the Odisha State Bar Council, Cuttack to make a preliminary inquiry and in the preliminary inquiry, if it is found that the ABLAPL was not entrusted to Mr. Asit Kumar Jena, learned counsel and the Petitioner had not signed in the Vakalatnama nor appeared before the Notary Public and sworn affidavit, to proceed against the Advocates concerned for alleged professional misconduct in accordance with law. Furthermore, for the aforesaid purpose, while communicating this order to the Odisha State Bar Council, Cuttack must be supplied with the

copy of the affidavit filed by the Petitioner in Court today, so also the copy of the entire application of the ABLAPL as well as the Vakalatnama. While making inquiry, Odisha State Bar Council, Cuttack is at liberty to make prayer for obtaining original record from this Court, if required for the purpose. Furthermore, it is observed that if in such inquiry, Odisha State Bar Council finds the allegation to have substance, then proceed against such Advocates, who are involved in such professional misconduct, in accordance with law.

(S. Pujahari)
Judge

DA

